

COURT OF CRIMINAL APPEALS NO. 02-0634

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF Montgomery COUNTY, ALABAMA

CIRCUIT COURT NO. CC-02-909

CIRCUIT JUDGE Truman Hobbs

Type of Conviction / Order Appealed From: Robbery I

Sentence Imposed: life

Defendant Indigent: ☒ YES ☐ NO

Kourtney Sovereign Greenwood, Alias

Kourtney Greenwood
NAME OF APPELLANT

Marco Kirkland 261-6200
(Appellant's Attorney) (Telephone No.)

529 S. Perry St.
(Address)
Montgomery AL 36104
(City) (State) (Zip Code)

V.

STATE OF ALABAMA

(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter name and address of municipal attorney below.

NAME OF APPELLEE

FILED

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STATE'S
EXHIBIT

P

1 know him personally.

2 Q. Okay. How do you -- I mean -- so you've
3 never talked to him?

4 A. No.

5 Q. Okay. Have you seen him since that March
6 date in any situation, have you seen him since
7 then?

8 A. I might have.

9 Q. You -- but certainly you have seen him in
10 a social occasion or a conversation or anything
11 else, right?

12 A. You know how you glance at folks and then
13 you don't really pay attention --

14 MR. HARTLEY: Okay. No further
15 questions. No further questions. Oh, wait. Wait.

16 Q. Have you ever been convicted of any
17 felonies?

18 A. Yes.

19 Q. Huh?

20 A. Yes.

21 Q. How many?

22 A. One.

23 Q. What was it?

24 A. A robbery first developed down to a theft
25 of property.

1 Q. Okay. Is that the only felony conviction
2 you've got?

3 A. Yes.

4 Q. What other arrests have you had for
5 felony or crimes involving moral turpitude?

6 MS. PERKINS: Objection, Judge.

7 THE COURT: Okay. I think you need
8 to rephrase that remark.

9 MR. HARTLEY: Okay.

10 Q. Okay. Do you have any other crimes that
11 you've been convicted of involving moral turpitude?

12 MS. PERKINS: Objection.

13 THE COURT: Do you know what moral
14 turpitude is?

15 THE WITNESS: No, ma'am.

16 THE COURT: Okay.

17 Q. All right. Is it your testimony that
18 your only felony is a robbery that was reduced to a
19 lesser offense?

20 A. Yes.

21 Q. And what was the lesser offense?

22 A. Theft of property.

23 Q. Theft of property. Okay. Did you serve
24 any time for it?

25 A. Boot camp.

1 Q. Excuse me?

2 A. Yes.

3 Q. How much?

4 A. Boot camp.

5 MS. PERKINS: Objection, Judge.

6 THE COURT: Sustained.

7 REDIRECT EXAMINATION

8 BY MS. PERKINS:

9 Q. On March 30th, 2002, what -- well, let me
10 go back. You said you do know of Kourtney; is that
11 right?

12 A. Yes.

13 Q. And on that date, you saw him, didn't
14 you?

15 A. Yes.

16 Q. And you saw him with Jamar Brown; is that
17 right?

18 A. Yes.

19 Q. And he did have twists in his hair; is
20 that right?

21 A. Yes.

22 MS. PERKINS: Nothing further of
23 this witness, Judge.

24 THE COURT: Then -- do you have
25 anything?

1 MR. HARTLEY: No further questions.

2 THE COURT: Okay. You're excused.

3 You can step.

4 (Witness excused.)

5 THE COURT: Do you have any other
6 witnesses?

7 MR. HARTLEY: (Attorney nods.)

8 THE COURT: Does the State have any
9 other witnesses?

10 MS. PERKINS: Nothing further,
11 Judge.

12 THE COURT: So the State, at this
13 time, rest?

14 MS. PERKINS: Yes.

15 THE COURT: And you renew your
16 motions?

17 MR. HARTLEY: Renew our motion.

18 THE COURT: Okay. Both sides, at
19 this time, have rested, and the attorneys will
20 address you again and make closing arguments. Does
21 anyone want to take a five-minute break?

22 (Juror raises hand.)

23 THE COURT: Do you need to take --
24 let's take about five minutes.

25 THE JUROR: Really just a glass of

1 water would be fine.

2 THE COURT: Okay. We can get you
3 water. But you -- if you want -- why don't we just
4 take a break if you --

5 PROSPECTIVE JUROR: Well, I hate
6 to --

7 THE COURT: That's okay.

8 THE JUROR: Really, it's okay. Just
9 a glass of water would be fine.

10 THE COURT: Okay.

11 THE JUROR: And I apologize.

12 THE COURT: That's okay. I've been
13 having the same thing. Just not quite where you
14 are yet.

15 Are we ready to proceed?

16 MS. PERKINS: Did he make his
17 motions on the record?

18 THE COURT: Yeah, he renewed his
19 motion.

20 MS. PERKINS: Okay.

21 Members of the jury, can you actually believe
22 we're at the end of this case? I -- let me correct
23 one thing from the beginning. This offense did
24 happen on April the 9th. It did happen on
25 April 9th. April 18th was the date that he was

1 developed as a suspect and that was on that
2 picture. That was my mistake. And I want to clear
3 that up. So, Mr. Greenwood was exactly right about
4 what he said when he was sitting here on that
5 particular offense. That's why I came back and
6 asked him on April 9th. Because on that date,
7 Ms. George (sic.) said that she was working, and
8 that's why I asked her that she was working that
9 night. And she still wasn't there on that night
10 too. So the same line of questioning went to that
11 particular night.

12 So, on April 9th, let's talk about what
13 actually happened on April 9th of 2002. What
14 happened? What really happened out there? What do
15 we know? Okay. We do know that Mr. Copeland was
16 walking down the street on Raintree over by
17 Virginia Loop Road. We do know that two black
18 males approached him. One put a gun to his head.
19 The other held the young man that was near him. We
20 do know that they took property from him. That,
21 members of the jury, according to the law in the
22 State of Alabama, equals a robbery.

23 A robbery -- and you're going to hear the law.
24 She's going to tell you -- the Judge is going to
25 tell you a lot about what that law is. A robbery

1 is when you have a theft, taking the property --
2 taking the property without you giving the
3 authorization to take it. Okay. A robbery is a
4 theft. But in the course of committing the theft,
5 in this case, of his wallet -- his wallet, his
6 money, and his identification. In the course of
7 committing that theft, I use force against you.
8 Okay. And, in this case, that force is putting
9 that gun to his head. I think we would all agree
10 that that's force. If somebody puts a gun to your
11 head, you're pretty much going to give them what
12 they want. Okay.

13 And, in the course of committing the theft,
14 you use force with intent to basically get this
15 person to comply with what you want them to do --
16 to get them to do what you're trying to get them to
17 do. That's what separates a theft from a robbery.
18 And some people use burglary and exchange them for
19 robbery, but that's not what we're here on.
20 Robbery, according to the law -- not what you saw
21 on Law and Order -- but according to the law right
22 here in the State of Alabama is in the course of
23 committing the theft the use of force. We know,
24 members of the jury, that that happened.

25 The question is, is this particular defendant

1 one of the ones who was out there participating?
2 That's what the issue in this case comes down to.
3 Okay. We know that the robbery took place. We
4 know his property was taken. We know it was two
5 people out there that did it. Was he one of the
6 ones out there that did it? Was he?

7 Now, let's talk about Mr. Copeland for a
8 second. Mr. Copeland got a good look at the two
9 people out there who did this. One of those
10 persons is Jamar Brown. He's the one that had the
11 gun. The second of those persons, he has
12 identified back then and he identified today to be
13 this defendant. Okay.

14 Now, there has been a lot of issue in this
15 case about twists -- about twists. And I don't
16 know how many of you have seen twists on people's
17 hair, how many of you know what a twists is. Okay.
18 Or how long somebody has to be -- there's a lot of
19 dispute about that. These are the pictures that
20 the defendant submitted into evidence. Pretty kids
21 too. But you're going to all get a chance to look
22 at it. There's not an exhibit sticker, but I think
23 there's --

24 THE COURT REPORTER: It's on the
25 back.

1 MS. PERKINS: It is on the back.
2 Okay. And you're going to get a chance to look at
3 those. And, as you look at these cute little kids,
4 I want to make sure that you look at the
5 defendant's hair, because that's really the
6 probative -- that's what these pictures were
7 entered into evidence to talk about. Okay. They
8 were here to talk about his hair.

9 Now, I used to have my hair down -- actually,
10 had an afro like this. It -- this year too, as a
11 matter of fact. And I was thinking, I wish that I
12 still had my hair --

13 MR. HARTLEY: Judge, I object to
14 what her personal opinion about her hair was.

15 THE COURT: I'm going to sustain.
16 You don't need to go into your hair.

17 MS. PERKINS: Well, what I'll do
18 then, is show -- because -- because we need to
19 know, as ladies -- as members of the jury, what
20 length someone's hair can be for you to be able to
21 twist it. Okay. That's an issue here. That's the
22 issue in the case. Everybody is saying he had his
23 hair this length and he didn't wear a twist. The
24 defendant is saying -- I mean, the victim is saying
25 he had twists. And we have another witness in here

1 saying that he had twists at the time. So what
2 length can your hair be to twist it? Now, I -- I
3 was saying this earlier, and I did this -- and I
4 want to scoot this out of the way -- to prove a
5 point. And I tried to do it on this side so that
6 you could see using the victim's hair. Now, this
7 hair is really, really, really low, what you would
8 consider low. And I believe this -- and I'm
9 definitely no expert in twisting hair -- but I'm
10 doing this to show you what length you can twist
11 somebody's hair. And I want you to see that even
12 at -- and this is how you twist hair. It's a
13 demonstration of what it is. And I did these three
14 to show you. And even at the length his hair is
15 right now, if I went around his head doing each one
16 of those little things, it would be able to be
17 twists. And that's important, members of the jury,
18 because this is what one considered to be -- sorry
19 for doing your head -- but this is what one
20 considered to be a low haircut, definitely.
21 Definitely, a lot lower than what you see on these
22 pictures. And I don't know if you all can see it
23 from -- good from over here, but if you turn --
24 turn around just a little bit, so they can see.
25 You see how those little -- they end up being --

1 and what you do when you're growing dreadlocks, you
2 keep on twisting and twisting and they grow out
3 longer. But, at this length, you can twist them
4 up -- twist your hair up, have that style, wash
5 them out and have another hairstyle. If his hair
6 can be twisted at this length, surely, members of
7 the jury, his hair could be twisted at this length.
8 And you're going to look on these pictures and see
9 the difference in between how thick his hair is on
10 these pictures and how -- how low his hair is on
11 those pictures. And I think we had to see that to
12 get a good look at that. Because, without somebody
13 in here with twists or with hair long enough to be
14 twisted, we know it's real easy for people to get
15 confused about that unless you know people with
16 twists or know how that works. So this is an
17 extreme example. His hair is really low. If you
18 can twist his hair, surely you can twist this.

19 Members of the jury, Larry -- Larry Copeland
20 saw this defendant out there that night with twists
21 in his hair. He saw him come up to him with
22 Jamar Brown, and Jamar Brown put a gun to his head
23 and took his property. He saw this defendant hold
24 that young boy that was walking with him. He went
25 and he called the police. They developed him as a

1 suspect. He identified him in a photo lineup. All
2 of the defense witnesses have been willing to
3 identify his hair that he didn't wear twists. He
4 didn't wear twists. We already know that even with
5 the length of his hair at the length that they say
6 it is, it could have been twisted, because I've
7 just showed you that. I just twisted way -- hair
8 way shorter than that. These are his family
9 members, members of the jury. You get to judge the
10 credibility of witnesses and what bias they have
11 and what interest in this case. They are his
12 family members.

13 The only person that came in here with
14 something besides those twists was the mother of
15 his children. And she was not there during that
16 night to say that he was there. She cannot put him
17 there. She can only say what he does generally.
18 She cannot say what he did on the night in
19 question, because she was not there. So he doesn't
20 have an alibi, because he can't -- she can't put
21 him there. Nobody says that but him. And does he
22 have motive to say, Yeah, I was there? Yes, he
23 does. He has motive to lie. Where does the truth
24 lie? Where does the truth lie? If you really weed
25 through everything, the only thing he's saying, I

1 wasn't there. I was at home by myself with a
2 six-pack of beer, baby-sitting my kids, and that --
3 and he's saying I had twists, but I didn't have
4 twists.

5 And we had somebody that come in, we have to
6 get in touch with that knows him, totally
7 unrelated -- they said, yeah I know him, but I saw
8 him before and he had twists. And I saw him with
9 Jamar Brown. Someone who doesn't -- is not a
10 relative, is not a family member. And, yeah, he
11 does have a prior felony. He's out on the street.
12 He has one just like Kourtney Greenwood does. I've
13 seen them around. I've seen him in the
14 neighborhood. And I've seen his hair, and I saw
15 him on that particular day and he had twists in his
16 hair. What interest does he have? That's what
17 this case comes down to, members of the jury. Was
18 he there? And the evidence shows, members of the
19 jury, that he was there.

20 Why did this victim pick him out randomly? If
21 he wasn't there, where would he just make his name
22 up from? He was there. He is the one that
23 assisted in the commission of this crime.

24 MR. HARTLEY: Your Honor, District
25 Attorneys, counsel.

1 Members of the jury, I want to thank you for
2 being our jury today. I have to admit that there
3 have been some stumbles along the way as far as
4 getting this case to flow as smoothly as we like
5 them to. Some of it was my fault. Some are
6 witnesses fault. Some things like that. I really
7 want to apologize, because I like to keep a case
8 moving. And this has been one that did not move as
9 I hope they always would be. So I apologize to
10 that for you. And I apologize if, in any way
11 you've been inconvenienced because of that, take it
12 out on me or complain to the Bar Association about
13 me or whatever, but don't take it out on my client.
14 I don't think that you would, but it's just been
15 sort of a hit and miss type thing getting this case
16 up here into the jury stance.

17 Let me talk about a number of topics that I
18 think are important before you, before you take
19 this case to the jury -- I mean, to the jury room.
20 I think that you're going to be faced with a very
21 tough decision about guilt or innocence, because
22 the stakes are high. This is an important case.

23 Later, right after I -- Ms. Perkins finishes
24 her second portion of her closing statement, you'll
25 get the charges of the law. And Judge Greenhaw

1 will give you a set of legal standards and
2 principles that apply to this case. She'll define
3 robbery again. She'll define what an accomplice is
4 for you. She'll give you some legal language to
5 test the burden of proof, which is beyond a
6 reasonable doubt. And she'll tell you what a
7 reasonable doubt is. And she'll tell you about
8 Mr. Greenwood's being -- having a presumption of
9 innocence. All those things you will need to
10 listen to very, very closely. Because, if -- that
11 would be like the -- sort of your guidebook to
12 consider the evidence within those parameters.

13 I submit to you that when you do that, you
14 will have good reason for finding him not guilty.
15 And I want to try to hit every point that I can
16 think of in regard to some serious weaknesses in
17 the State's case and what I submit to you are some
18 good points in the defense case.

19 Mr. Greenwood wrote me a note and it said that
20 he thinks this case stands -- this case stands for
21 this proposition, that possibly an innocent man can
22 be sent to prison because of the possibility that
23 he could have had twists in his hair. I think, in
24 a way, he's correct on that. But I think there's a
25 whole lot more to it than that -- is contained

1 in that statement. This case really -- I mean,
2 maybe there is a question about whether he could
3 have had twists in his hair or not. I guess I
4 could have had twists in my hair. But look at what
5 contradicts that evidence. I submit to you that
6 these photographs contradict the victim's claim
7 that the person who was involved had twists in his
8 hair, not because they show necessarily that his
9 hair is too short to have twists, but because these
10 photographs clearly show that he, on more than one
11 occasions, is there are photographic evidence to
12 show what his hairstyle was. It's almost like the
13 State is trying to make a case, say, Hey, he put
14 these twists in his hair so that somebody wouldn't
15 recognize him. Well, Hey, if he wanted to do that,
16 why wouldn't he wear something over his face or put
17 something, like a -- sunglasses -- I mean no
18 sunglasses, not at night -- but something. If
19 you're going to go to that trouble, why wouldn't
20 you put something around his head to shade his
21 face? Why would you just twist your hair to
22 mislead somebody? That's a fallacious argument,
23 because I think anyone in this courtroom would
24 admit that if he had twists, they had to be little
25 bitty short twists like this -- little bitty short

1 twists.

2 And remember what Mr. Copeland's testimony
3 was? This guy named Jamar Brown approached him and
4 came up to him and stuck a gun in his face and was
5 demanding that he, you know, submit to a robbery.
6 What, if you looked over here in the dark, would
7 you -- and you're far away from me and him, would
8 the first thing that you would notice and the only
9 thing that you would notice would be possibly
10 twists in somebody's hair? Would that be what you
11 would notice about somebody while a gun is sticking
12 in your face? Your focus would be so acutely
13 focused -- your attention would be so acutely
14 focused on that gun, you couldn't tell if it was
15 lighting outside at that time. But be that as it
16 may, that's what he said.

17 Okay. All right. Let's see if he's -- if you
18 give him that ability, then let's figure something
19 else out. Then that means that he's a pretty
20 observant person who is capable in the crux of a
21 very tragic moment -- or what do you call it --
22 traumatic moment, he's able to absorb details and
23 remember facts. That's what -- that's what that
24 would be a conclusion about him. All right. One
25 of the things that we can present to you this

1 afternoon is that there is a lack of evidence in
2 the case. Okay. I'm going to tell you where the
3 lack of evidence is. Here's a man who claims he
4 can identify somebody under those circumstances,
5 but can't even tell you the last name or the --
6 where a person lives, who he's known for eight or
7 nine years and was with him on that night. Now,
8 how can you be so smart in one situation and so
9 incapable of giving information about a key
10 material witness? Not only a witness, a victim. A
11 thirteen-year-old boy.

12 Hundreds of thirteen year olds have testified
13 in courtrooms. They are considered competent.
14 There's not even a question as to their competency,
15 unless they were mentally retarded or something.
16 They would be competent witnesses. He's certainly
17 an eyewitness to this case. He was right there in
18 the middle of it. Remember, this man who could
19 make the perfect identification, couldn't tell you
20 Serillo's last name.

21 What was he doing with this kid out there that
22 night? Maybe the reason is he was doing something
23 he shouldn't have been doing. He was up to
24 something. He didn't want -- he didn't want that
25 kid to be able to come in and be questioned about

1 what in the heck they were doing. What do you do
2 with a thirteen-year-old kid at 11:30 at night on
3 Tuesday night, a weeknight, who's not your job, no
4 blood relationship to you? And he said he was
5 going to a -- he said he was going to a
6 girlfriend's house is where he was headed. There's
7 something wrong. There's something wrong to that.

8 He -- and what -- and what it is, that's one
9 of the witnesses that we need here. I mean, why
10 wouldn't this person be here to back up his
11 identification. That person was closer to whoever
12 it is than he was. So they've got a big lack of
13 evidence. So this is a man who can positively
14 identify somebody eight days later out of a group
15 of six. Where is your photo lineup? You know, one
16 out of six odds, you know, that ain't bad odds. I
17 mean, you can pick somebody out of here. What the
18 heck, they're all very similar. That's what a
19 photo lineup is supposed to do, just pick somebody
20 out. This will be available to you, I believe. We
21 have admitted it, I believe.

22 Okay. That's the lack of evidence. This
23 thing took place at night. Identification of
24 people at night is more difficult than the daytime.
25 We don't know what the lighting was out there. I

1 think he said it was near a street light. I don't
2 care what the deal was. 11 o'clock at night is one
3 thing and daytime is another thing. It's hard to
4 identify at night.

5 Now, another thing I want to address for a
6 moment or two is his demeanor. One of the things
7 that you gauge as jurors is credibility. You are a
8 test -- sort of a polygraph, I guess you might call
9 it, a selective polygraph. And you are supposed to
10 use your common -- commonsense knowledge -- or
11 whatever you want to call it -- your general
12 knowledge of how people behave, how people act, and
13 how people are presenting themselves when they are
14 testifying. I suggest to you that Mr. Copeland was
15 a little nervous, most disjointed witness that he
16 could possibly be.

17 I was making a note, and I was going to tell
18 you that this is the whatever case or the you know
19 case. You know, we were out there, you know,
20 whatever, you know, you know. He must have used
21 whatever about a hundred times in his testimony.
22 And it -- It's kind of hard to even follow him.

23 Now, I'm going to bring up three more -- three
24 witnesses to contrast that to. We had
25 Deven Greenwood, sister and Lavan Howard. They

1 were consistent in their testimony about his hair.
2 Now, some of you might say, Well, you know, she --
3 it's his blood kin. You know, they'll come in here
4 and they'll testify to anything. Well, ask
5 yourself: Did they look like they were lying?
6 Were they nervous when they were testifying? Did
7 they -- did they -- were they inconsistent with,
8 you know, with what each other said? Or were they
9 giving you what appeared to be an honest statement
10 of what they knew about their brother's hair --
11 well, not brother, of course, not from
12 Lavan Howard. But the two girls were his
13 brother -- his sister. And she was his, you know,
14 like a husband -- like a wife for a period of time.
15 I ask you to -- to give -- give weight to what you
16 think their credibility is.

17 I also would say that you should take his --
18 the way he testified and his demeanor and his
19 posture in this case -- or his poise in this case
20 as a witness. I think he testified to you with the
21 sincerity that you would expect to come from
22 someone.

23 Now, what -- what -- how strong is the State's
24 case? They've got a witness who has got a little
25 bit of a suspect story about who his

1 thirteen-year-old friend was, who's out there doing
2 something that we ain't -- we're not sure. They
3 were wandering around out there that night going to
4 see somebody, who was allegedly the victim of a
5 robbery and the person that robbed him, apparently,
6 is Jamar Brown. The State argues that the second
7 person was participating in the robbery. I didn't
8 hear that much in the participating. But that's
9 not the thrust of our case. If you think that
10 there was a second person out there and that person
11 was participating, okay. I'm submitting to you
12 that the State hasn't proved that he was out there.
13 But, the person that stuck the gun to his face, I
14 ask you to remember was Jamar Brown. That person
15 has been identified. I believe he, in fact, has
16 pled guilty to this offense.

17 When you add the witnesses of the State's
18 case, which I submit to you, I have outlined for
19 you -- and, of course, you can make your own
20 assessment. I may have overlooked something. I
21 think important testimony was Lavan Howard was
22 confident or sure that on Tuesday nights in April
23 she was going to work and going to her second job
24 and that she routinely had him at home
25 baby-sitting. I submit to you these photographs

1 are at least consistent with a man who has a
2 relationship with his children, who is affectionate
3 with his children, who would be the type that would
4 assume that responsibility and baby-sit on
5 occasions as needed.

6 The State tried to bring in one -- one of
7 their rebuttal witness, a man, himself, whose
8 testimony didn't come across all that sterling and
9 is a convicted robber himself. I submit to you
10 that that testimony travels rather weak. I don't
11 know how he would be able to tell, after such a
12 long period of time, he's got twists in his hair.
13 I don't know how that would be -- that would be
14 hard to remember that. What would be important
15 about that? But he said it.

16 I will ask you -- I will leave you with this
17 question. And I think that Mr. Greenwood did make
18 an important point when he said, could somebody
19 have had twists in his hair? I don't think that's
20 the real issue. I think it -- what -- what's the
21 strength of this man's testimony? And how could he
22 not have told the police who the other victim was
23 who would have been the witness that could make or
24 break this case? When he left that out, I think he
25 gunned his own case down. Long hair, short hair,

1 afro, corn rolls -- or whatever those --
2 dreadlocks, or whatever, that's all, to me, less
3 important than the fact that he didn't identify
4 this kid with enough specificity that a police
5 officer -- and believe me, they can find people.
6 They've got investigators to go out and find
7 somebody. All you've got to do is say I've got a
8 witness that lives at such and such address. They
9 can -- they've got police cars roaming this city
10 looking for witnesses all the time.

11 Now, anybody -- you might get back there and
12 say, Well, you know, it's the police officer's
13 fault -- Mr. Bruce -- Buce. He should have done
14 something. Well, if he did, he should have done it
15 is right, and maybe we would have some testimony
16 from that person. But, he took -- you know, they
17 could have done it. But he could have given the
18 information or Buce could have sought the
19 information. Either way, it is a weakness or a
20 lack of evidence on the State's side.

21 In summary, I'll say to you this, that the
22 evidence, as it stands today, does not prove him
23 guilty of anything beyond a reasonable doubt. It
24 leaves us room for substantial doubt. We submit to
25 you that a proper assessment of the juror -- of the

1 evidence in this case will justify a reasonable
2 doubt. But to -- hand in hand with that goes his
3 presumption of innocence. It doesn't matter that
4 he's been convicted of something before. It
5 doesn't matter -- he took the stand and admitted to
6 his prior transgression. But he's still presumed
7 innocent. And I ask you to take that presumption
8 back there and give it its due weight. Then stack
9 up the evidence and stack up what the defense said
10 in regard to how he always kept his hair and never
11 had those twists or whatever, and ask yourself, am
12 I convinced beyond a reasonable doubt of his guilt.
13 I submit to you that I -- that that's not a
14 reasonable -- or not -- or not the reasonable
15 finding of this trial. A reasonable finding is
16 there's a doubt. The State didn't pass that --
17 that standard of proof. That standard is so high,
18 and it sometimes said that if a -- if a District
19 Attorney proves that it was possible that somebody
20 is guilty, that's not beyond a reasonable doubt.
21 If they prove that it's probable that they're
22 guilty, it's not beyond a reasonable doubt. It is
23 a standard above possible -- beyond possible and
24 beyond probable. It's got to exclude all
25 reasonable doubt. That is a high standard, and we

1 just ask you to listen to the Judge when she
2 delineates it to you in her jury charge. And then,
3 under that standard, we ask you to find
4 Mr. Greenwood not guilty. Thank you.

5 MS. PERKINS: Counsel.

6 Mr. Hartley was just talking about reasonable
7 doubt. I think a good question -- if I was sitting
8 there, I would be asking what is reasonable doubt.
9 You know, what does that mean? And reasonable
10 doubt is a doubt -- it's an actual doubt. Okay.
11 It's not a suspicion or guess or a possibility of a
12 doubt. It's an actual doubt. It's a doubt that
13 arises from the evidence or the lack of evidence,
14 like Mr. Hartley said. But it's an actual doubt.
15 It's not something that you're just sitting here
16 saying, Um, I wonder about that, but, you know,
17 there's nothing that you can point to, you know,
18 from the evidence that's reasonable, where you can
19 actually get that particular doubt. I want you to
20 be clear about what that is, and I hope I've
21 cleared that up for you. It's not a surmise. It's
22 not a guess. It's not a speculation, well, such
23 and such and such maybe. Your doubt has to be
24 reasonable and it has to arise from the evidence or
25 the lack of evidence.

1 Okay. Now, there's one thing, as I was
2 sitting there, I wanted everybody to keep in mind.
3 You know, this guy's testimony and about this
4 guy's. This is a victim of a robbery. This is
5 a -- this man -- this is a guy that was walking
6 down the street and had a gun put to his head and
7 had property taken from him. He's a person. When
8 this happened to him on April the 9th of 2002, it
9 was near a street light. That's what his testimony
10 said. And he got a good look at the two people
11 that was standing there in front of him. One of
12 those persons was Jamar Brown, who put a gun to his
13 head. And the other one was Kourtney Greenwood
14 that held the little boy.

15 And I want to go back and talk about the law
16 for the second. Okay. If he didn't put the gun to
17 his head, why is he charged with this offense?
18 That's a good question. There's a law in the State
19 of Alabama. And, again, that's why I asked you,
20 would you be willing to follow this law, not what
21 you think would be the law and not what you saw on
22 Law and Order last night -- or you're going to see
23 tomorrow night. I think tomorrow is Wednesday --
24 tomorrow night. Okay.

25 The law, aiding and abetting says, if you

1 assist somebody in the participation of a crime,
2 then you're just as guilty as the person who did
3 it. Okay. So if I'm driving a car and you go in
4 there and rob the gas station -- and I'm the get
5 away car driver -- you run out, and I get in the
6 car and I drive off, yeah, they're going to charge
7 with me breaking in that place and taking the
8 stuff, just like they charged you, even though I
9 didn't go in there and do it. So whoever the
10 person is that was standing there holding that
11 little boy is just as guilty as Jamar Brown even
12 though he didn't put a gun to his head, because he
13 was assisting him.

14 Now, who is the person that was standing there
15 with Jamar Brown when Jamar Brown put the gun to
16 his head? Members of the jury, it was
17 Kourtney Greenwood. What evidence has there been
18 that he was not there? An alibi by his baby's mom
19 who comes in today. If you know -- and think about
20 it, members of the jury -- if she knew that the
21 father of her children was charged with something
22 and she knew -- she knew he was charged back then.
23 She said he called home and said he was charged.
24 If someone calls and says such and such was charged
25 with a crime and you knew they didn't do it and you

1 had evidence --

2 MR. HARTLEY: Judge, I object. I
3 think this is improper argument. I don't think it
4 creates a burden on him or anybody to create a
5 defense.

6 THE COURT: I'm going to sustain it
7 in that line. But you can rephrase that.

8 MS. PERKINS: Okay. If she knew --
9 if she knew, this woman that took this witness
10 stand -- and I questioned her about it and I asked
11 her, Wouldn't that be important information, if
12 you -- if she knew he was innocent, the father of
13 her children that she doesn't want to see go to
14 jail -- if she knew that he wasn't there, that he
15 was somewhere else at the time, you don't think she
16 would have gone and told the police that? She came
17 in here and testified today. If she knew that back
18 then -- well, they didn't come to me. How are they
19 supposed to know? You've got evidence that this
20 man is innocent. You know that he's charged with a
21 crime, why don't you go down there and tell them?
22 Why didn't you call the DA office? Why didn't you
23 do something? But she didn't, members of the jury.
24 First time you hear about that is in here today.
25 That's it. She had information on this guy's

1 innocence she could have told the police, yeah,
2 detective, it would have been true. But, no, we
3 get it after the facts, where there can't be no
4 investigation about that. We can't investigate
5 that. No, we're already here. Because if I had
6 would have come back and told you then, you could
7 have gone and checked out all this stuff. But,
8 now, I can't check nothing out, because this is the
9 moment of truth, so I'll come in and tell it now.
10 Convenient. That's the kicker, because that's his
11 alibi. I wasn't there. I was at home with a
12 six-pack of beer and my kids watching a movie. The
13 only preservation of that alibi is the baby's
14 mother saying, I was at work. She wasn't there.
15 But she comes in with that testimony to corroborate
16 his testimony today when nothing can be done to
17 check it out. When she could have done it back
18 then, she knew he was charged and it could have
19 been investigated and find it true, we never would
20 have got to this point. That's convenient.

21 And, members of the jury, he does not have an
22 alibi, because that is not credible. That is not
23 credible. Why -- how else do we know that he
24 wasn't there? Well, because Mr. Greenwood said
25 that the person that was there had twists. And he

1 never wears his hair like this. It's always in a
2 short little afro. Okay. We already know that a
3 short afro can be twists, you know. Nodding your
4 head like that, send an innocent man to jail with
5 twists -- because of twists. He's not going no
6 where because of no twists. Twists is not an
7 issue. The issue is, Were you standing there when
8 a gun was put to this man's head?

9 We've already decided that the alibi is not
10 credible. Could he have had twists? Who are the
11 people that said he didn't have twists? Sister.
12 Sister. Well, who is the person that came in,
13 person from the community, not the sister, not the
14 cousin, not nothing, just somebody we could get
15 when they came up that we knew that knew him and
16 said, Okay. You know this guy. Have you seen him?
17 Have you seen him with twists before? Yeah, I saw
18 him with twists. Have you seen him with
19 Jamar Brown before? Yeah, I've seen him with
20 Jamar Brown. He don't have no connection. He's
21 not a cousin, family member, or nothing. He comes
22 up here -- I put him on for that limited purpose,
23 because that was the issue. And the time is far
24 spent. The issue is everybody is up here saying
25 that this guy doesn't have twists and that he said

1 he don't know Jamar Brown. Have you seen him with
2 Jamar Brown? Yes I have. Have you seen him with
3 twists? Yes I have. Who is more credible? Does
4 he have a felony? Yes, he does.

5 Does he have a felony? Yes, he does. That
6 makes it more credible to me, because he's out
7 there where he is and sees him around. He hangs
8 around. He didn't say, I know him. I'm not his
9 boy. I'm not his best friend. I don't hang out
10 with him. He's not somebody that I, you know, go
11 shoot basketball with or whatever, but I know of
12 him. I know of him. And it's reasonable to know
13 of somebody. If I know of you of my community,
14 even though I haven't talked to you, I'm qualified
15 to testify about what I've seen you like. You all
16 are qualified to testify about what you've seen my
17 hair like once you've left here, because you've
18 seen me. Did her hair look like that? Yeah, I saw
19 it. And just because you don't know me or you
20 haven't hung out with me, does that mean that your
21 testimony is any less credible about what you saw
22 my hair look like? You saw me. And his testimony
23 is more credible, because he don't have a reason to
24 sit up here and lie about it. He ain't no family
25 member. He ain't got no connection. He's just

1 innocent.

2 Now, let's talk about Serillo. And I want to
3 say this -- and I don't know if this is a culture
4 thing -- but it's legitimate to bring up, because
5 Mr. Hartley has made it an issue. It is very
6 reasonable in African/American communities for you
7 to know people by their nicknames and know them in
8 the streets and not know their last name from your
9 neighborhood. I just know this little kid that's
10 out in the street. I saw him out there when I was
11 walking down the street. I was, like, Hey, little
12 kid, come with me. Didn't know his last name. I
13 think there is a lack of evidence as far as why the
14 police didn't investigate that. I don't have no
15 problem admitting, I can't make up evidence that's
16 not there. It is so not there. It is just totally
17 not there. But is that reasonable doubt enough to
18 acquit this man for what he did when we have
19 everything else lined up and his defense doesn't
20 buy.

21 And you know what, if you consider that it is,
22 then do what you got to do. Let him go. Even
23 though he was there when this man put this gun to
24 his head and the law holds him guilty. He said he
25 didn't want that little boy to get involved,

1 because he hated he had told him to come with him
2 and got him involved with this any way. He told
3 the police his name. Didn't follow up on him,
4 because he -- he hated that he put him in that
5 situation anyway. He saw them both. He identified
6 them both. His looked at them both. His alibi
7 doesn't wash up, because it's not quivocal. It
8 comes in here when it can't be investigated. And
9 he could have had twists in his hair. And have
10 somebody say that he did have twists in his hair
11 about that point. So that destroys the credibility
12 of their witnesses.

13 That's what this case comes down to, members
14 of the jury. And you really do have a serious
15 decision to make. You have to weigh the evidence.
16 And you have to weigh what happened out there. We
17 know that it was a robbery. We know, by law, that
18 whoever the person that was out there with
19 Jamar Brown when Jamar Brown put this gun to his
20 head, we know that whoever was out there is guilty
21 just the same as Jamar Brown. The question for you
22 all to consider is, Is this the man that was out
23 there with Jamar Brown? The victim says he got a
24 good look at him. He identified him, and he
25 identified Jamar Brown. Identified him then,

1 identified him in a photo lineup, and he identified
2 him today. What says that he's not there? His
3 alibi, which we know is not credible. And
4 number two, the fact that the person he identified
5 had twists and his family says he doesn't have
6 twists. That's the only two things that are not
7 there. His alibi is not credible. We know that he
8 could have had twists and we have a good
9 identification.

10 He was there, members of the jury. And he
11 needs to be found guilty -- just as guilty as the
12 person that put that gun to his head. We know that
13 you will render the only fair and just verdict in
14 this case, which is a verdict of guilt.

15 THE COURT: Let me ask. It's right
16 at five o'clock, I'd rather you be fresh -- but if
17 you want to stay, let's --

18 (Jurors nod.)

19 THE COURT: Okay. I see -- it will
20 be a good time to take a break. What time do y'all
21 want to come back in the morning? In the morning,
22 I'll charge you, and my part won't take as long as
23 theirs. But what time, 8:30 or 9:00? You're in
24 charge now. 9:00 or --

25 PROSPECTIVE JUROR: 8:30.

1 THE COURT: 8:30. Good. We'll --

2 PROSPECTIVE JUROR: 7:30.

3 THE COURT: Now, y'all need to start
4 agreeing, so -- but 8:30 in the morning. And we'll
5 get you in the jury assembly room. And, again,
6 I'll caution you not to discuss the case. And if
7 anybody at home asks you about it, just say the
8 Judge said I can't talk about it. So we'll see you
9 in morning.

10 (Out of the presence of the jury.)

11 THE COURT: Mr. Hartley --

12 MR. HARTLEY: I'm sorry. I was
13 getting distracted, Judge.

14 THE COURT: I think he wants to say
15 something, but I don't want him to say it
16 without --

17 MR. HARTLEY: I think it was kind of
18 like the jury argument, Judge, I believe is what
19 it's leading to.

20 THE DEFENDANT: (Defendant nods.)

21 MR. HARTLEY: Oh, okay.

22 THE DEFENDANT: I just wanted to say
23 a couple of things to you, Ms. Greenhaw, and
24 whoever else is in here. If I had any part of
25 doing this or knew anything about it, I would have

1 been told -- okay, Ms. Greenhaw, I know what you're
2 fixing to do -- but I don't know Mr. Brown. And I
3 don't know Mr. Copeland --

4 THE COURT: Well, you know --

5 THE DEFENDANT: I don't know
6 Mr. Franklin.

7 THE COURT: -- you've testified to
8 that, and it's going to be up to the jury. You
9 know, that's what it comes down to. And none of us
10 have any control over that.

11 THE DEFENDANT: I just don't want to
12 be in no situation like that that I don't know
13 nothing about.

14 THE COURT: Okay.

15 MR. HARTLEY: Judge, what time did
16 they decide to come back?

17 THE COURT: 8:30.

18 (Break for the day.)

19 (In the presence of the jury.)

20 THE COURT: Good morning.

21 (Jurors respond.)

22 THE COURT: Now, we need to lock
23 that back door. I don't want everyone coming in
24 and out. Everyone that's in here, you've got to
25 stay in here. You cannot leave while I'm charging

1 the jury. And you need to be seated.

2 THE DEFENDANT: Ms. Greenhaw, can I
3 say something, please?

4 THE COURT: No. You need to say it
5 to your attorney. Now, I'm getting ready to charge
6 the jury.

7 It's now my duty to explain to you the law
8 that will guide you in your deliberations. We all
9 appreciate how carefully you've been listening.
10 And I know you'll continue to do so. I'm going to
11 go slow, because unfortunately in the State of
12 Alabama, you're not permitted to have a copy of my
13 charge to take with you to deliberation room. Now,
14 I disagree with the law in that respect, but I must
15 follow it and so must you.

16 Now, this case is brought to you by an
17 indictment which charges Kourtney Greenwood with
18 Robbery in the First Degree. I want you to
19 understand, from the beginning, that the indictment
20 here has no bearing whatsoever on the guilt or
21 innocence of any person. It is not evidence in the
22 case. It's merely the paperwork or legal process
23 by which the case is presented for trial.

24 Now, as to this charge, the defendant has pled
25 not guilty. A plea of not guilty places the burden

1 on the State of Alabama to prove by the evidence
2 the guilt of defendant beyond a reasonable doubt.
3 So before a conviction can be had, each of you must
4 be satisfied beyond a reasonable doubt of his
5 guilt. Otherwise, he's entitled to an acquittal.

6 Furthermore, the defendant is presumed to be
7 innocent. And that presumption attends him until
8 his guilt is established from the evidence beyond a
9 reasonable doubt. This presumption of innocence is
10 evidence in the case and is to be considered by you
11 along with all the other evidence. It's a fact
12 which is to be considered by you and goes with the
13 defendant to your verdict unless the evidence
14 convinces you beyond a reasonable doubt of the
15 prudent --

16 THE DEFENDANT: Ms. Perkins.
17 Ms. Perkins, why don't you go on and tell them
18 what --

19 THE COURT: Now, wait just --

20 THE DEFENDANT: -- what Jamar Brown
21 told you yesterday? That dude told you he didn't
22 know me.

23 THE COURT: Okay. I'm going to have
24 the jury go out. If you'll take --

25 THE DEFENDANT: He told you he

1 didn't know me.

2 THE COURT: -- them into the jury
3 deliberation room?

4 THE DEFENDANT: He told you he
5 didn't know me, Ms. Perkins. Why don't you tell
6 the jury that, Ms. Perkins. Don't lie. This is my
7 life on the line.

8 THE COURT: Mr. --

9 THE DEFENDANT: An innocent man can
10 go to prison for nothing.

11 THE COURT: Mr. Greenwood --

12 THE DEFENDANT: Tell them, Ms.
13 Perkins. An innocent man can go to prison for
14 nothing, Ms. Perkins. Please tell the jury that.
15 Please tell the jury that, Ms. Perkins. That man
16 told y'all he didn't know me yesterday.

17 THE COURT: Mr. Greenwood -- and I
18 don't want to say it in front of the jury -- he
19 needs to stay out here.

20 THE BAILIFF: Okay.

21 THE COURT: Is the door closed?

22 THE COURT REPORTER: Not yet, Judge.
23 (Out of the presence of the jury.)

24 THE COURT: Mr. Greenwood, you have
25 the right to stay in the courtroom if you conduct

1 yourself in a proper manner. If you do not, you
2 will not be allowed to stay in the courtroom. Now,
3 I can cite you, at this time, for being in direct
4 criminal contempt of court. However, in light of
5 your other sentence -- a life sentence, I don't
6 think that that's worth my time. So I want to know
7 now whether you're going to stay in here and remain
8 silent. If not, we'll make arrangements so you can
9 hear my charge.

10 MS. PERKINS: Judge, the State is
11 going to ask for a mistrial. I mean, that's
12 information that the jury was not supposed to hear.

13 THE COURT: I didn't hear what all
14 he said.

15 MS. PERKINS: He said, Why don't you
16 tell him what Mr. Jamar Brown said? Don't hold --

17 THE DEFENDANT: He told y'all -- he
18 told y'all yesterday he didn't know me --

19 THE COURT: Mr. Greenwood --

20 THE DEFENDANT: Ms. Perkins.

21 THE COURT: What did he say, Ms. --

22 THE DEFENDANT: I need a lawyer,
23 Mama. Get me a lawyer. Don't let them do me like
24 this, please.

25 THE COURT: Okay. I'm citing him

1 for -- we'll make arrangements for -- to have some
2 way for him to hear it.

3 Tell the jury there's going to be a slight
4 delay and they can take about an hour break. We're
5 going to have to make some adjustments. Take him
6 back there.

7 THE DEFENDANT: Why y'all going to
8 let them do me like this? Make sure they know
9 what's going on, Mama. Make sure --

10 THE COURT: Take them out the back
11 way.

12 THE DEFENDANT: -- they know what's
13 going on. That dude told her -- ask her.

14 (Out of the presence of the
15 defendant.)

16 THE COURT: I'm going to find out if
17 Mr. Merrill -- we don't have a monitor, do we?

18 (Out of the presence of jury.)

19 THE COURT: Mr. Greenwood, the Court
20 had indicated before -- and I will state again.
21 You will not be able to stay in the courtroom when
22 I'm charging the jury. I also want to correct
23 myself. I had indicated I would not hold you in
24 contempt because you had a life sentence. You do
25 not have a life sentence. That was someone last

1 week. So the Court will warn you again that you
2 would be subject to contempt. You're going to be
3 taken back to the jury deliberation room. You will
4 be able to hear everything that goes on in there.
5 There will be deputies with you. If you have any
6 outbursts that can be heard in here, then you will
7 be gagged.

8 So, at this time -- and it will take probably
9 about five minutes to get the jury together. But,
10 whenever, you can take him back there.

11 **THE BAILIFF:** Yes, ma'am.

12 (In the presence of the jury.)

13 **THE COURT:** I'm sorry about the
14 delay. But now I'm going to continue charging you.

15 And I had previously charged you that the
16 indictment is not evidence and that the State has
17 the burden of proof and that the defendant is
18 presumed to be innocent. And that is a fact which
19 is to be considered by you and goes with your --
20 with the defendant to your verdict unless the
21 evidence convinces you beyond a reasonable doubt of
22 each and every element of the offense here.

23 Now, you've heard the term reasonable doubt
24 mentioned. It's a relative term. And it's not
25 always easy to define. But, basically, a

1 reasonable doubt, it's a fair doubt based upon
2 reason and common sense arising from the evidence.
3 In short, it's a doubt for which you can assign a
4 reason that comes from the evidence. Now, a
5 reasonable doubt may arise not only from the
6 evidence produced, but also from a lack of evidence
7 or any part of the evidence.

8 Now, the law tells us this about the term
9 reasonable doubt. It's not just a mere possible
10 doubt. In other words, it is not a mere guess,
11 surmise, or capricious doubt. The doubt which
12 would justify an acquittal, it must be an actual
13 doubt. The reasonable doubt which entitles an
14 accused to an acquittal, it's not fanciful --
15 fanciful, vague, conjectural, or speculative. But,
16 again, it's a reasonable doubt arising from the
17 evidence and remaining after a careful
18 consideration of the testimony such as men and
19 women such as you would consider under all the
20 circumstances.

21 Now, the State is not required to convince you
22 of defendant's guilt beyond all doubt or to a
23 mathematical certainty. Again, it's beyond a
24 reasonable doubt. I told you earlier that you're
25 the sole judges of the evidence, and I'm going to

1 remind you or explain to you again what is and what
2 is not evidence. First, the indictment, as I said,
3 it is not evidence. In addition, the arguments,
4 statements, or assertions or demonstrations of the
5 attorneys, that is not evidence. Rulings made by
6 the Court during the course of the trial, that is
7 not evidence. Evidence is simply the testimony of
8 witnesses under oath from the witness stand, any
9 exhibits or documents that were actually admitted
10 and any presumptions of law that I've given you,
11 such as the presumption of innocence.

12 Just as you're the judges of the evidence,
13 you're also the sole and exclusive judges of the
14 credibility of witnesses and the weight that should
15 be given their testimony. In passing on the
16 credibility of a witness, you have the right to
17 consider any bias, interest, or prejudice that may
18 have been exhibited to you while that person was
19 testifying. You also can consider the demeanor of
20 the witness on the stand. That is, how did they
21 appear to you while they were testifying? You also
22 can consider the basis for their testimony. That
23 is, how did they know the facts to which they
24 testified? Did they have an opportunity to see,
25 hear, just how did they know or learn those facts?

1 Now, the defendant in this case has testified
2 in his own behalf, and he has a perfect right to do
3 so. And you cannot capriciously disregard his
4 testimony any more than that of any other witness.
5 The law is that you must take his testimony in the
6 case and consider it along with all the other
7 testimony. But while you are evaluating his
8 testimony, you may also take into consideration his
9 interest in the outcome of the case.

10 In addition in evaluating the testimony of any
11 witness, you can consider whether or not that
12 person has prior convictions. However, with regard
13 to the defendant, you may only consider them in
14 assessing his credibility in this case. You cannot
15 assume that just because he has been convicted of a
16 prior offense that he may have committed this
17 offense. That's not permissible as you may only
18 consider a prior conviction in evaluating
19 credibility.

20 Now, the defendant here also asserted the
21 defense of alibi. That is to say that he was at
22 another place when this offense was committed. The
23 burden of proof does not shift to the defendant
24 when he undertakes to advance an alibi defense.
25 Rather you're to consider the evidence of his alibi

1 with all the other evidence. And if you have
2 reasonable doubt as to the guilt of the defendant,
3 then you would find him not guilty.

4 There's also been an issue raised regarding
5 identification. The reliability of eyewitness
6 identification is an issue and deserves your
7 attention when evaluating the credibility of the
8 witness testifying to the identification. And
9 you're to consider it as you would the testimony of
10 any other witness. In addition to that, you're to
11 consider whether or not the witness had an adequate
12 opportunity at the time of the offense to observe
13 the person or hear the person. Also, you can
14 consider the circumstances under which the victim
15 or the eyewitness observed the person. The -- such
16 things as the length of time, the visibility,
17 distance, lighting. You can consider those type of
18 conditions. If you have a reasonable doubt as to
19 the identity of the defendant as to the person who
20 committed the offense, then you would find the
21 defendant not guilty.

22 Now, in Alabama there is a law which is called
23 aiding and abetting. And the law in Alabama is
24 that a person is legally accountable for the
25 behavior of another person constituting an offense

1 if with intent to promote or assist the commission
2 of the crime, he aids or abets such other person in
3 committing the crime. And there's no distinction
4 between principles and accessories in the
5 commission of the offense. And an accessory is
6 just as liable for that offense as the principal.
7 Aid and abet comprehends all assistance rendered by
8 acts or words of encouragement, support or
9 presence, actual or constructive to render
10 assistance should it become necessary. However,
11 mere presence, without giving aid or encouragement
12 at or before the commission of the offense, does
13 not constitute aiding and abetting.

14 With regard to this particular offense, as you
15 know, the defendant is charged with robbery in the
16 first degree. Under the law of Alabama, a person
17 commits the offense of robbery in the first degree,
18 if he, in the course of committing a theft uses or
19 threatens the imminent use of force against the
20 person of the owner of the property or any person
21 present, with the intent to overcome that person's
22 physical resistance, and, in doing so, is armed
23 with a deadly weapon. So in order to convict, the
24 State must prove beyond a reasonable doubt that the
25 defendant, Kourtney Greenwood, committed or

1 attempted to commit or aided and abetted in the --
2 in the attempt to take any type of property from
3 the victim. That in the course of committing or
4 attempting to commit or in aiding and abetting the
5 theft, the defendant used force against the person
6 with intent to overcome his physical resistance or
7 physical power to resist or threaten imminent use
8 of force against the person with intent to compel
9 acquiescence to the taking of the property and that
10 the defendant was armed with a deadly weapon or
11 aided and abetting while one was armed with a
12 deadly weapon. And here it would be a gun.

13 A person commits the crime of theft of
14 property if he knowingly obtains or asserts
15 unauthorized control over the property of another
16 with intent to deprive the owner of his property.
17 A deadly weapon is any firearm or anything
18 manifestly designed or adapted for the purpose of
19 inflicting death or serious physical injury. And a
20 person acts intentionally with respect to a conduct
21 when his purpose is to cause that result or to
22 engage in that conduct. And a person acts
23 knowingly with respect to conduct when he is aware
24 that his conduct is of that nature or that the
25 circumstance exists. And a deadly weapon can

1 include such items as a pistol.

2 If you find from the evidence that the State
3 has proved beyond a reasonable doubt each of the
4 elements of the offense of robbery in the first
5 degree, then you would find the defendant guilty as
6 charged. On the other hand, if you find that the
7 State has failed to prove one or more of the
8 elements of robbery in the first degree, then you
9 would find the defendant not guilty.

10 In a moment, you'll be beginning your
11 deliberations. And, in passing on the evidence,
12 you have the right to use your knowledge of people
13 and their affairs. This is the tool that is given
14 you, in which some of us simply call your common
15 sense. In arriving at your verdict, you must not
16 permit sympathy, prejudice, or emotion to influence
17 you. Furthermore, you must not base your verdict
18 upon any preconceived idea of what would be a
19 popular or unpopular verdict. In other words, your
20 verdict must strictly be based on the evidence
21 presented in the courtroom and the law that
22 applies.

23 Also, before you reach a verdict, all twelve
24 of you must reach or agree on the same verdict. In
25 other words, there can be no split verdict. It

1 must be unanimous.

2 In a moment when you go back to the jury
3 deliberation room, one of the first things you need
4 to do is to select one person to act as your
5 spokesperson or your foreperson. Now, that person
6 will have no greater weight in your deliberations
7 than anyone else, but will simply act as your
8 spokesperson. You need to discuss the case. And
9 if you have any questions -- and there's paper and
10 pencil back there -- have the foreperson write out
11 the question, sign. And if it's a question of law,
12 I will answer it. However, if it's a question of
13 fact, I cannot assist you, as you're the sole and
14 exclusive judges of the facts. Once you have
15 reached a verdict, have the foreperson sign the
16 verdict form, and you'll be brought back into the
17 courtroom and it will be read in the courtroom.

18 The verdict form is very simple, and there's a
19 place for you to check. And it's we, the jury,
20 find the defendant guilty of robbery in the first
21 degree as charged in the indictment. Or we, the
22 jury, find the defendant not guilty.

23 There's one last thing I must do. And I --
24 after you've been here for two days and waited a
25 lengthy time -- but we found from past experience

1 when a case goes this long, and particularly into
2 another day, it's always wise to have an alternate.
3 And it's extremely important, because if the number
4 reaches less than twelve, I would have to declare a
5 mistrial and we would have to start all over. So
6 I'm sure you understand the importance of it. And
7 it is not unusual for something to come up during
8 the course of the trial. In fact, it happens more
9 frequently than you can imagine, that a juror
10 cannot continue serving as a juror. But, at this
11 time, I'm going to -- the alternate is
12 Eloise Wilkerson. And when the rest of you are
13 taken, in a moment, back to the jury deliberation
14 room, I'm going to have you stay in here.

15 Now, the attorneys are real good about letting
16 me know if I've misstated something or need to
17 charge you further.

18 What says the State?

19 MS. PERKINS: State's satisfied,
20 Judge.

21 MR. HARTLEY: Satisfied, Judge.

22 THE COURT: Okay. In just a moment,
23 you'll be taken back to the deliberation room.
24 Now, you're in charge of your time now. You can
25 take breaks if you want to. If you want to go down

1 and get a Coke, you can do so. You also have your
2 own thermostat back there, so you're in charge --
3 it's either too hot or too cold in the courtroom.

4 And, in just a moment, we'll get the exhibits
5 and they'll go back with you as well as the jury
6 verdict form. It will be just -- and there are
7 also restrooms back there. And it will be just a
8 moment.

9 MS. PERKINS: Judge --

10 THE COURT: And let me say one last
11 thing. I know you're aware that Mr. Greenwood is
12 not in the courtroom. But you cannot infer
13 anything prejudicial whatsoever by his not being
14 present in the courtroom. Okay. So, if you'll --

15 MS. PERKINS: Judge, my coat is back
16 there. Can I get it before they go back there?

17 THE COURT: Yeah.

18 MS. PERKINS: (Ms. Perkins
19 complies.)

20 THE COURT: Okay. If all of you
21 will --

22 (Alternate juror comes to the
23 bench.)

24 THE ALTERNATE: I'm sorry.

25 THE COURT: Okay.

1 (Out of the presence of the jury.)

2 THE COURT: I just wanted to tell
3 you how much we appreciate you serving. I know
4 it's been a long two days. The good news is you
5 are excused for the rest of the day.

6 THE ALTERNATE: Thank you.

7 THE COURT: But you would need to
8 call code-a-phone tonight, and they'll let you know
9 what to do about tomorrow or the rest of the week.
10 And it's up to you whether you want to talk to
11 anybody about the case.

12 THE ALTERNATE: Thank you very much.

13 THE COURT: Now, we need to bring
14 Mr. Greenwood back out and take up a few final
15 details.

16 THE BAILIFF: You need him back out?

17 THE COURT: Yes.

18 (In the presence of the defendant.)

19 THE COURT: You were back in the
20 deliberation room the whole time?

21 THE BAILIFF: Yes, ma'am.

22 THE COURT: Mr. Greenwood, of
23 course, you were back in the deliberation room and
24 we had a monitor back there. And I need to know,
25 were you able to hear the Judge's jury charge?

1 THE DEFENDANT: (Defendant nods.)

2 THE COURT: You need to --

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. And I think there
5 were deputies -- two deputies back there, and y'all
6 could hear it as well?

7 THE BAILIFF: Yes, ma'am.

8 THE COURT: I had -- the State had
9 hurriedly asked for a mistrial at one time. And,
10 let me just say this, I'm not going to let --

11 MS. PERKINS: We withdraw that
12 motion.

13 THE COURT: Okay. Well, I was going
14 to say, I don't think the conduct -- I'm not going
15 to let error be invited into the record. But you
16 withdraw?

17 MS. PERKINS: Yes, Judge.

18 THE COURT: Now, Mr. Greenwood, I
19 got your letter or your note. And, of course,
20 you're still referring to Jamar Brown, and
21 although, we went over some things yesterday, I
22 want to be sure it's in the Record. And
23 Mr. Brown's attorney, Mr. Durant, was here
24 yesterday and is here as well. And is there
25 anything anyone wants to say regarding Mr. Brown?

1 MR. HARTLEY: I will start, Judge,
2 by saying that, first of all, prior -- some time
3 ago Mr. Brown had pled guilty in this matter.
4 Yesterday morning, I talked to Mr. Durant before I
5 went and spoke to Jamar Brown. I asked Mr. Durant
6 if it was okay if I went and talked to him, because
7 I had some information that said that he might
8 testify in a way that would be beneficial for
9 Kourtney Greenwood. I went to the jail yesterday
10 morning and sat with Mr. Brown, explained to him my
11 role in the case. I understood that he had already
12 pled guilty. I don't think I had attended his
13 guilty plea, so I asked him what he would be saying
14 pertaining to Kourtney Greenwood's participation in
15 the -- or lack of participation in the offense.

16 I'll just summarize that he represented that
17 he would be a witness for the defense. I then
18 proceeded to the part of the jail where
19 Mr. Greenwood was and told him. I said, I cleared
20 it with Mr. Durant. I talked to Mr. Brown, and I
21 think he's going to be a defense witness. I --

22 THE DEFENDANT: State what --

23 MR. HARTLEY: Well -- coming to your
24 defense, stating that Kourtney Greenwood was not at
25 the scene and that he was not acquainted with him.

1 regard. We've had the transcript of Mr. Brown's
2 plea -- and that's Court Exhibit A, and it's in the
3 Record. And when the State was putting on its
4 offer of proof, Mr. Greenwood, it was stated that
5 he was with Mr. Brown on that occasion.

6 MR. HARTLEY: Of course, Judge, we
7 think that that is what the Record says. We think
8 that it is typical -- that was an offer from the
9 State, and he just said yes to --

10 THE COURT: I'm just simply saying
11 that that's part of the Record.

12 MR. HARTLEY: However, yesterday, he
13 said he had told the State and told his attorney,
14 and -- and made several references, he said that he
15 had told them that Kourtney Greenwood was not there
16 and he didn't know Kourtney Greenwood. He made
17 that representation and led us to believe that it
18 was on the Record. But he did say that that's what
19 his position was, but he refused to testify as such
20 in the trial.

21 THE COURT: Well, that was not on
22 the Record, that --

23 MR. HARTLEY: Right. But it --

24 THE COURT: -- representation.

25 MR. HARTLEY: -- but he said that he

1 represented that to the DA's office.

2 MS. PERKINS: Judge, may I --

3 THE COURT: Yes.

4 MS. PERKINS: I have said on the
5 record more than one time that Mr. Brown did tell
6 myself and Mr. Durant again yesterday in front of
7 Mr. Hartley. And I think we brought both of them
8 out here. He did say -- and I have said it on the
9 Record more than one time -- that he did tell me he
10 did not know Kourtney Greenwood on the Record. At
11 the same time, when I did do the offer of proof, he
12 did say, Yes -- yes, this is what the facts show.
13 Don't know what he meant -- was not in his head --
14 but, as we normally do the offer of proof, he
15 accepted that in order to get his plea -- that
16 version of the facts in order to get his plea of
17 guilty. He did represent to me that he did not
18 know -- did not know Mr. Greenwood. I was back
19 there. Mr. Durant was back there. Mr. Hartley and
20 Mr. White. I told Mr. Brown, as well, in presence
21 of his attorneys and everybody else, that what the
22 State wanted him to do was testify truthfully, then
23 get on the witness stand, tell the truth and then
24 there would be no problem. If he gets on the
25 witness stand and lies, then that would be a

1 problem for me.

2 I told him that the State of Alabama does not
3 do sentencing. The Court does sentencing. And all
4 of that was communicated to him. Once we all had
5 the conversation with him, he said that he did not
6 want to testify. And that's what he decided. Was
7 that because we had a witness here saying that they
8 did know him. I don't know why that was. But he
9 decided that he did not want to testify. And
10 that's a decision that was made. That's where we
11 stand.

12 MR. DURANT: And, Judge, may I add
13 that after everyone had left, all of the attorneys,
14 I spoke to Mr. Brown by myself. And I indicated to
15 him that he was the one to make the decision,
16 whether he was going to testify or not. That all
17 we wanted him to do was --

18 MS. PERKINS: -- tell the truth.

19 MR. DURANT: -- to tell the truth.
20 And, at that time, he indicated to me that he did
21 not want to testify. And I -- I subscribe to what
22 everyone has said, he has -- he has, from the
23 outset, said he did not know Mr. Greenwood.

24 THE COURT: Okay. I just wanted all
25 of this to be on Record.

1 MR. HARTLEY: And could I ask
2 Mr. Durant one question?

3 THE COURT: Yes.

4 MR. HARTLEY: Did he express a
5 reservation because he thought it would affect his
6 sentence?

7 MR. DURANT: Yes, he did.

8 MS. PERKINS: But wasn't he
9 communicated to -- and I want to clear this up for
10 the Record, because I don't want there to be any
11 confusion if there is an appeal or something. He
12 was told over and over by the Court, by myself, by
13 Mr. Durant, and by you that none of us have any
14 effect on sentencing. There was no threats made to
15 him or promises on either way concerning his
16 sentence. As a matter of fact, he was told that
17 the State of Alabama, out of my mouth in the
18 presence of both of you all, that the District
19 Attorney's office does not sentence. The Court
20 does that. And all the State of Alabama wanted him
21 to do was testify truthfully.

22 MR. DURANT: And I told him the same
23 thing when we were alone.

24 THE COURT: Okay. Well, that's all
25 for now.

1 THE DEFENDANT: Ms. Greenhaw, I
2 was -- when all this saying was going on, I was in
3 the little holding cell right there, listening and
4 looking at everything. And I know what -- exactly
5 what they said. And he looked -- Mr. Brown looked
6 exactly at Ms. Perkins, and she leaned back and
7 looked at him, and said that -- he knew -- he said,
8 I go to sentencing this week. I ain't fixing to go
9 in there in front of those folks like that, because
10 I go for sentencing. I know what y'all goin' try
11 to do. You know, what I'm saying. I know what's
12 going -- I ain't going in there like this. I ain't
13 going in there like this.

14 I'm standing right there in the holding cell
15 looking --

16 THE COURT: Okay. Well, I think
17 everyone is -- there's not that much disagreement
18 about what occurred. Okay. That's all right now.

19 (Jurors deliberating.)

20 (In the presence of the defendant.)

21 THE DEFENDANT: (Defendant raising
22 his hand.)

23 THE COURT: Mr. Greenwood, wait just
24 a moment. The jury has a verdict. You can stay in
25 the courtroom if you do not say anything. But if

1 you're going to say something, I need to know now,
2 because then you cannot stay in the courtroom.

3 THE DEFENDANT: I ain't going to say
4 nothing to nobody. I just want to talk to you.

5 THE COURT: Well, I don't want
6 anything said to the jury. Do you understand that?

7 THE DEFENDANT: I ain't going to say
8 nothing to them.

9 THE COURT: Okay. Then -- and I
10 don't want any outbursts from anyone else in the
11 courtroom.

12 (In the presence of the jury.)

13 THE COURT: I understand that you've
14 reached a verdict and you want the Court to read
15 the verdict?

16 THE FOREPERSON: Yes, ma'am.

17 THE COURT: Who has --

18 THE BAILIFF: (Hands it over.)

19 THE COURT: It is the verdict of the
20 jury, we, the jury, find the defendant guilty of
21 robbery in the first degree as charged in the
22 indictment.

23 Do you want the jury poled?

24 MR. HARTLEY: Yes, Judge.

25 THE COURT: I'm going to ask each of

1 you this same question, and I'll start with you.

2 Is this your verdict?

3 THE JUROR: Yes, ma'am.

4 THE JUROR: Yes.

5 THE JUROR: Yes, ma'am.

6 THE JUROR: Yes.

7 THE JUROR: Yes.

8 THE JUROR: Yes.

9 THE JUROR: Yes.

10 THE JUROR: Yes.

11 THE JUROR: Yes.

12 THE JUROR: Yes.

13 THE JUROR: Yes.

14 THE JUROR: Yes.

15 THE COURT: And let the Record

16 reflect that all the jurors indicated -- said it
17 was their verdict. And, in accordance with the
18 verdict, the Court will adjudicate the defendant
19 guilty as charged.

20 I want to tell you how much we appreciate your
21 serving. I know it's been a long two days. And
22 I'm hoping that you won't have to come back, but
23 you still need to call code-a-phone tonight, but I
24 think we might can work it out where you don't have
25 to be back. We appreciate you serving. And,

1 although I told you earlier I'd explain some
2 delays, I really don't think you care about knowing
3 about them now. They're just, unfortunately, some
4 delays that could not be avoided. And we
5 appreciate your patience and --

6 Do you want to take them out the back?

7 THE BAILIFF: Yes, ma'am.

8 PROSPECTIVE JUROR: Does this mean
9 we don't have to come back this afternoon?

10 THE COURT: No. You do not --
11 you're excused the rest of the day. You've done
12 your civic duty, and you might have for the whole
13 week.

14 In fact, call Bob and see if they can be
15 excused. I don't know where we are with jury
16 trials.

17 Because, if you are, it's small compensation,
18 but you can go down and get your juror fees.

19 I do want to say one thing for your
20 information that, although Mr. Greenwood wasn't in
21 here during the Court's closing, arrangements were
22 made so that he could hear everything that was
23 going on.

24 MS. STRICKLAND: Right now, they
25 need to call code-a-phone tonight.

1 THE COURT: Call code-a-phone.

2 MS. STRICKLAND: Maybe you'll get
3 lucky.

4 THE COURT: Okay. And -- they can
5 go out the front now, I think.

6 THE BAILIFF: You want them to go
7 out the front?

8 THE COURT: Yeah, I think it's okay.
9 Everyone needs to stay in the courtroom until
10 the jurors leave.

11 (Out of the presence of the jury.)

12 THE COURT: We'll just set
13 sentencing for the 30th -- I don't see that on this
14 calendar, but it's a court date, isn't it?

15 MS. STRICKLAND: Yes, ma'am.

16 THE COURT: And if you'll --

17 MS. PERKINS: Is that -- that's
18 December 30th of this --

19 THE COURT: Is somebody asking a
20 question?

21 MS. PERKINS: Me.

22 THE COURT: Okay. I'm setting
23 sentence for December 30th at 8:30.

24 MS. PERKINS: 8:30, Judge?

25 THE COURT: Yes.

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(Court was adjourned.)

* * * * *

END OF PROCEEDINGS

* * * * *

REPORTER'S CERTIFICATE

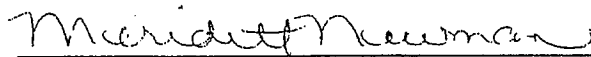
STATE OF ALABAMA

TALLAPOOSA COUNTY

I, Meridith Newman, Court Reporter and
Commissioner for the State of Alabama at Large,
hereby certify that on Tuesday, December 10, 2002,
I reported the TESTIMONY AND PROCEEDINGS in the
matter of the foregoing cause, and that the
foregoing pages contain a true and accurate
transcription of said proceedings.

I further certify that I am neither of kin nor
of counsel to any of the parties to said cause, nor
in any manner interested in the results thereof.

This 6th day of February, 2000.



Meridith Newman, Court Reporter
Commissioner for the State of
Alabama at Large

MY COMMISSION EXPIRES: 12/30/2005